



**EDMONTON
TRIBUNALS**

*Subdivision &
Development
Appeal Board*

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Date: August 4, 2016
Project Number: 188679671-001
File Number: SDAB-D-16-171

Notice of Decision

- [1] On July 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on June 22, 2016. The appeal concerned the decision of the Development Authority, issued on June 21, 2016, to refuse the following development:

construct exterior alterations (driveway extension for RV parking from Arpil 1st to Oct. 31st) to an existing Single Detached House

- [2] The subject property is on Plan 9222664 Blk 38 Lot 33, located at 16135 - 59 Street NW, within the RF1 Single Detached Residential zone. The Hollick Henyon Neighbourhood Structure Plan and Pilot Sound Area Structure Plan apply to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A photograph of the Site;
 - A petition signed by residents of the neighbourhood;
 - Canada Post delivery confirmation;
 - Site Plans;
 - The refused Development Permit;
 - The Development Officer's written submissions;
 - Satellite imagery of the Site;
 - Online responses from the public (2 in opposition; 1 in support);
 - The Hollick Kenyon NSP; and
 - The Pilot Sound ASP.

Preliminary Matters

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26.

Summary of Hearing

i) Position of the Appellant, Ms. F. Kuziw

- [7] The Appellant reiterated the Grounds of appeal included in the Notice of Appeal.
- [8] She and her husband are applying for a Driveway extension because they bought a new RV for the holidays. They were able to park their old RV diagonally on the existing Driveway, but the new one does not fit. The Driveway extension would make it safer for them to have the vehicle on Site for packing and unpacking purposes. If they are not using the RV for a prolonged period of time, they put it into storage.
- [9] They had been parking on the street, but the neighbourhood has become more congested making it difficult to park the RV there without blocking the use of the street. When parked on the street, the RV comes very close to the neighbouring Driveway, causing safety concerns and obstructing sightlines.
- [10] They decided to install some hard-packed gravel next to the Driveway in order to accommodate the RV. They have plants they use to decorate it when the RV is not parked on it.
- [11] They have spoken with some of their neighbours, many of whom take no issue with the proposed development. If the time comes when any of their neighbours are looking to put their homes up for sale, they will accommodate them by making sure the RV is out of sight. They do not believe that the RV is ugly, but, at the same time, they are not looking to cause any inconvenience to their neighbours.

ii) Position of the Development Officer, Mr. G. Robinson

- [12] The Development Officer confirmed that the Mature Neighbourhood Overlay does not apply to the subject Site.
- [13] He referred to satellite imagery of the Site and its surrounding 60-metre radius. He stated that this imagery should give the Board a visual understanding that a vehicle as large as the Appellant's RV is not characteristic of the neighbourhood.
- [14] His calculation of the width of the extended Driveway accounts for the adjacent walkway as well as the gravel portion added by the Appellant. The width he calculated was 10.08 metres.

[15] He also confirmed that this could be a situation where the Board could interpret the proposed development to have two Driveways on the same Site. Using the definition of Driveway from the *Zoning Bylaw* indicating that the Driveway must provide access to a Garage or Parking Area, if the Board were to interpret the front edge of the Garage to be a Front Yard, the subject Site could be seen as having two Driveways, a contravention of the *Zoning Bylaw*.

iii) Rebuttal of the Appellant

[16] With respect to the space between the house and the sidewalk, there is plenty of room to accommodate the RV. No one will come into contact with it.

[17] There will be no other vehicle parked on the proposed Driveway extension at any time.

Decision

[18] The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.

Reasons for Decision

[19] The proposed development is an Accessory to a Permitted Use, Single Detached Housing, in the RF1 Single Detached Residential Zone.

[20] The Development Authority has found the following contraventions to the *Zoning Bylaw* associated with the proposed development:

- i)* It gives the effect of a parking space being located within a Front Yard, which is prohibited by Section 54.2(2)(e)(i);
- ii)* It proposes to have a vehicle located on the landscaped portion of a Front Yard in a Residential Zone, contrary to Section 45(7), which only permits vehicles in the Front Yard or the flanking Side Yard in any Residential Zone to be parked on a Driveway or within an attached or detached Garage; and
- iii)* It exceeds the maximum Driveway width prescribed by Section 54.1(4).

[21] In this case, the proposal is for a Driveway of 10.08 metres in width, which exceeds the maximum prescribed by Section 54.1(4) the *Zoning Bylaw* by 3.88 metres. The Board accepts the opinion of the Development Authority that there is no unnecessary hardship or practical difficulty associated with the subject Site. It is a regular, rectangular lot and similar in shape to the neighbouring properties.

- [22] The Board notes that the sheer size of the vehicle intended to be parked on the proposed Driveway extension raises significant safety concerns in relation to its potential impact on vehicle and foot traffic in a Residential Zone.
- [23] The Board determines that the proposed development would significantly increase the massing effect on the streetscape. In fact, the Appellant acknowledged that having the vehicle parked on Site would have a visual impact on the neighbourhood and could diminish the value of the neighbouring properties.
- [24] The Board acknowledges that there was some support for the appeal, but the most affected neighbour submitted correspondence to the Board in opposition to the proposed development.
- [25] In the opinion of the Board, the proposed development would materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Accordingly, the appeal is denied.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Important Information for the Applicant/Appellant

1. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
2. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

NOTE: The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the stability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, when issuing a development permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.



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Date: August 4, 2016
Project Number: 188872205-001
File Number: SDAB-D-16-172

Notice of Decision

- [1] On July 20, 2016, the Subdivision and Development Appeal Board heard an appeal that was filed on **June 23, 2016**. The appeal concerned the decision of the Development Authority, issued on June 9, 2016, to refuse the following development:

change the Use from General Industrial Uses to Indoor Participant Recreation Services and Accessory Commercial School and to construct interior alterations (105.6 sq. m. of Public Space, 20 occupants).

- [2] The subject property is on Plan 3256HW Blk 19 Lots B,C, located at 10939 - 120 Street NW, within the IB Industrial Business zone. The Central McDougall/Queen Mary Park Area Redevelopment Plan applies to the subject property.
- [3] The following documents, which were received prior to the hearing and are on file, were read into the record:
- A floor plan drawing;
 - A municipal improvement agreement;
 - A memo from Transportation Services;
 - Site Plans;
 - The refused Development Permit;
 - The Development Officer's written submissions
 - A letter in support of the proposed development from the Community League; and
 - The Central McDougall/Queen Mary Park ARP.

Preliminary Matter

- [4] At the outset of the appeal hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

- [6] The appeal was filed on time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Summary of Hearing

i) Position of the Appellant, Mr. J. Trapp

- [7] The Appellant reiterated the Grounds for Appeal included in the Notice of Appeal.
- [8] The proposed development is located in one bay of Holland Plaza, a recent development that separated one industrial building into 17 separate bays. Holland Plaza is entirely zoned for industrial uses. The difficulty is that every incoming tenant is operating a Use that is not industrial. This is where the parking deficiency becomes an issue. As the City has been granting changes in Use to other Applicants occupying a portion of the subject Site, the cumulative parking variance on Site is growing in order to accommodate these developments.
- [9] Also, the Development Authority categorized the proposed development into Use classes that are not an accurate description of the business that will be operating on Site. The business is a meditation studio, a Use that would more appropriately fit into the Health Services Use category, a Use that would require fewer off-street parking stalls.
- [10] The studio will typically run classes before and after work, when other parking in the area is not in high demand. It will be at its busiest before nine o'clock in the morning and after five o'clock in the afternoon. These are not peak parking times. Further, as the classes run for approximately 30 minutes or less, there should be no concern with respect to vehicles spilling out into residential areas as a result of the proposed development.
- [11] Additionally, the business will be offering clients discounts for carpooling and cycling to the location to further alleviate any potential congestion.
- [12] There are 19 stalls that the developer of the building has developed for angle parking on the Site. Those 19 stalls were not included in the Development Officer's parking analysis. Once there is an occupation permit granted for those stalls, they will be included in any parking calculation. An additional 10 stalls of interior parking has been developed as well. These stalls should alleviate any concern related to parking.
- [13] In total, the developer has designated 44 parking stalls for the proposed development, not including the additional 19 stalls that will be available once the licence of occupation is granted in a matter of weeks. The building is also approximately 90% leased already, so the constraints in parking are not expected to increase significantly by the time the business starts operating.

ii) Position of Affected Property Owners in Support of the Appellant

- [14] Mr. R. Shuttleworth appeared on behalf of the Queen Mary Park Community League to show support for the proposed development.
- [15] He stated that the Development Officer may have applied the parking regulations contained in the *Zoning Bylaw* too stringently on this occasion. There has been a lack of consistency in terms of how these rules have been applied throughout Queens Mary Park recently.
- [16] This particular strip of properties on 120th street, where the subject Site is located, were all old industrial developments, many of which have since become vacant properties. When those properties were first purchased for industrial purposes, they were built with large parking lots surrounding them. As a result, there is very little on-street stress in the area, unlike other areas within Queen Mary Park. There is ample on-street parking available in the area surrounding the subject Site.
- [17] The developer approached the Community League early in the process to explain their concept, and the Community League supports the conversion of the old warehouse into a strip with different modern Uses. The services on Site are such that clients drive up, get what they need and leave. It is not an office building where employees park their vehicles all day.
- [18] There will be no impact on residential parking in the area. The closest residential parking area is a full two blocks away from the proposed development. If anyone was looking for on-street parking close to the subject Site, it is unlikely they would travel as far as 118th street.

iii) Position of the Development Officer, Mr. P. Belzile

- [19] With respect to the number of parking stalls counted on Site, the Development Officer stated that they have been receiving conflicting plans. The approved count that the Development Authority has been working with is the one provided by Transportation Services, showing 37 spaces instead of 44. They cannot currently include the 19 parking stalls on 119th street in their calculations because those stalls are not located entirely on the Site. However, if the licence of occupation is granted, those stalls will be included.
- [20] With respect to the classification of the proposed Use, he stated that, where a Use does not fit under a specific Use Class in the *Zoning Bylaw*, the Development Officer has to use his discretion to determine which Use Class would determine the intent of that Use. In this case, the proposed Use does not fall in line with the typical characteristics of a Health Services Use, which consist of waiting areas leading to an office area. Health Services is not intended for large-group instruction.

- [21] The Development Officer confirmed that there is already a parking variance that has been granted for the subject Site, and any development going into a vacant bay on Site will require a further variance. The extent of that additional variance depends on what goes into the vacant space and its potential effect on parking strain in the area. To have development in those vacant bays could potentially require a further variance of up to 24 parking spaces.
- [22] The subject Site requires 232 parking stalls to comply with the *Zoning Bylaw*. As it stands, the Site has been approved for 136 stalls and a variance for an additional 58 stalls. In total, it has approval for 194 stalls. The proposed development is adding a need for an additional 35 stalls, requiring a further variance. This calculation does not account for the 19 stalls that are pending.

iv) Rebuttal of the Appellant

- [23] In rebuttal, the Appellant stated that the licence of occupation for the 19 additional stalls has been submitted and is weeks away from approval. He asks that those 19 spaces be considered.
- [24] With respect to the growing parking variance on the subject Site, the reason that approvals were made by the Development Authority prior to this application is that, upon visiting the site, it is apparent that there is ample parking in the area and that residential areas will not be affected.

Decision

- [25] The appeal is **ALLOWED** and the decision of the Development Authority is **REVOKED**. The development is **GRANTED** as applied for to the Development Authority, subject to the following **CONDITIONS**:
- i)* All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1 .1.c)
 - ii)* Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)
 - iii)* Access from the site to 109A Avenue, 119 Street and 120 Street exists. Any modification to the existing accesses requires the review and approval of Transportation Planning and Engineering.

- iv) There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.
- v) Any hoarding or construction taking place on road right-of-way requires an OSCAM (On-Street Construction and Maintenance) permit. It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an OSCAM on line at: http://www.edmonton.ca/bylaws_licences/licences_permits/oscam-permit-request.aspx.
- vi) Any sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Planning and Engineering, as per Section 15.5(f) of the Zoning Bylaw. The sidewalks and boulevard will be inspected by Transportation Planning and Engineering prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

[26] In granting the development, the following variances to the *Zoning Bylaw* are allowed:

- i) The off-street parking requirements with respect to the subject Site, including the proposed Indoor Participant Recreation Services prescribed by Section 54.2 Schedule 1, are varied 96 spaces from 232 spaces to 136 spaces.
- ii) The off-street parking requirements with respect to a change in Use from a General Industrial Use to an Indoor Participant Recreation Services Use prescribed by Section 54.2 Schedule 1 are varied 35 spaces from 38 spaces to 3 spaces.

Reasons for Decision

- [27] The proposed development involves an application for what was deemed by the Development Authority to be a change in Use from General Industrial Uses to Indoor Participant Recreation Services with an Accessory Commercial School and to construct interior alterations. The proposed development requires variances to the number of parking stalls required by the *Zoning Bylaw* to accommodate this change in Use.
- [28] The Board notes that both Indoor Participant Recreation Services and Commercial Schools are Discretionary Uses in the IB Industrial Business Zone.
- [29] The Board determines that, despite the change in Use, the proposed development is compatible with its surrounding area. It is in step with other changes in Use having already occurred with respect other developments on the subject Site.

- [30] The Board notes that the subject Site, a recently redeveloped, formerly industrial, multi-bay structure, has previously been granted parking variances in order to accommodate prior changes in Use occurring in leased bays on the Site. The Board notes and the Development Officer confirmed that, as a result of the previous variances granted, any proposed development involving a new Use on the subject would require a further variance to the *Zoning Bylaw*'s parking requirements.
- [31] The Appellant gave evidence that they anticipate implementing a business plan dictating that the majority of their clientele will visit the Site during non-peak parking periods. In any event, the Board has heard that ample on-street parking is readily available in the area.
- [32] The Board notes that a licence of occupation has been applied for to the City that could result in an additional 19 existing parking stalls being available for the proposed development's clientele. These stalls were not included in the Development Authority's parking analysis, nor have they been accounted for by the Board in allowing the requested variances.
- [33] A representative of the Community League appeared at the hearing to voice support for the proposed development. He indicated that, as the subject Site is located several blocks away from residential parking, there is no residential impact resulting from the proposed development. The Community League does not anticipate any on-street stress or congestion in the area.
- [34] Based on the evidence and submissions provided to the Board, the Board determines that the proposed development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Mr. B. Gibson, Presiding Officer
Subdivision and Development Appeal Board

Advise ments

1. Transportation Planning and Engineering required as a condition of the original development permit (DA# 153537372-001), that the owner enter into a Licence of Occupation for hardsurfacing and use of the boulevard parking off of 120 Street as these 19 stalls are partially located on road right-of-way. These 19 stalls were previously used for the parking calculations and are still a requirement of the on-going development, as shown on Enclosure I. The parking stalls and sidewalk have not been constructed to City of Edmonton standards, this situation is under review.
2. Transportation Planning and Engineering required as a condition of the original development permit (DA# **153537372-001**) that an easement be registered for public access on the sidewalk located on the east side of 120 Street. The easement has not yet been registered. This is still a requirement of the on-going development of the site as shown on Enclosure I.
3. Future development applications that propose a further deficiency in the required parking for the overall site will require submission of a parking justification including field observations to be submitted to the satisfaction of Transportation Planning and Engineering. At this time there has not been any parking issues registered with this area. Transportation Operations are currently working with Queen Mary Park residents with respect to the ICE District impacts and other sites.
4. This Development Permit is **NOT** a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.
5. Signs require separate Development Applications.
6. A building permit is required for any construction or change in Use of a building. For a building permit, and prior to the plans examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre (780-442-5311) for further information.
7. The City of Edmonton does not conduct independent environmental checks of land within the City. **If** you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.
8. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

9. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.

Important Information for the Applicant/Appellant

1. This is not a Building Permit. A Building Permit must be obtained separately from the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.
2. Obtaining a Development Permit does not relieve you from complying with:
 - a) the requirements of the *Edmonton Zoning Bylaw*, insofar as those requirements have not been relaxed or varied by a decision of the Subdivision and Development Appeal Board,
 - b) the requirements of the *Alberta Safety Codes Act*,
 - c) the *Alberta Regulation 204/207 – Safety Codes Act – Permit Regulation*,
 - d) the requirements of any other appropriate federal, provincial or municipal legislation,
 - e) the conditions of any caveat, covenant, easement or other instrument affecting a building or land.
3. When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until any conditions of approval, save those of a continuing nature, have been fulfilled.
4. A Development Permit will expire in accordance to the provisions of Section 22 of the *Edmonton Zoning Bylaw, Bylaw 12800*, as amended.
5. This decision may be appealed to the Alberta Court of Appeal on a question of law or jurisdiction under Section 688 of the *Municipal Government Act*, R.S.A. 2000, c. M-26. If the Subdivision and Development Appeal Board is served with notice of an application for leave to appeal its decision, such notice shall operate to suspend the Development Permit.
6. When a decision on a Development Permit application has been rendered by the Subdivision and Development Appeal Board, the enforcement of that decision is carried out by the Sustainable Development Department, located on the 5th Floor, 10250 – 101 Street, Edmonton.

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